
SENATE BILL No. 28

DIGEST OF INTRODUCED BILL

Citations Affected: IC 33-39-1-8; IC 35-38-2-2.3; IC 35-50-5-3.

Synopsis: Restitution. Specifies that the state may be considered a victim of a crime for purposes of receiving restitution for the costs incurred by the state in prosecuting the crime.

Effective: July 1, 2007.

Waltz

January 8, 2007, read first time and referred to Committee on Judiciary.

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Introduced

First Regular Session 115th General Assembly (2007)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2006 Regular Session of the General Assembly.

SENATE BILL No. 28

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 33-39-1-8, AS AMENDED BY P.L.176-2005,
2 SECTION 21, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2007]: Sec. 8. (a) ~~After June 30, 2005~~, This section does not
4 apply to a person who:

- 5 (1) holds a commercial driver's license; and
6 (2) has been charged with an offense involving the operation of
7 a motor vehicle in accordance with the federal Motor Carrier
8 Safety Improvement Act of 1999 (MCSIA) (Public Law
9 106-159.113 Stat. 1748).

10 (b) This section does not apply to a person arrested for or charged
11 with:

- 12 (1) an offense under IC 9-30-5-1 through IC 9-30-5-5; or
13 (2) if a person was arrested or charged with an offense under
14 IC 9-30-5-1 through IC 9-30-5-5, an offense involving:
15 (A) intoxication; or
16 (B) the operation of a motor vehicle;

17 if the offense involving intoxication or the operation of a motor vehicle

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was part of the same episode of criminal conduct as the offense under IC 9-30-5-1 through IC 9-30-5-5.

(c) A prosecuting attorney may withhold prosecution against an accused person if:

- (1) the person is charged with a misdemeanor;
- (2) the person agrees to conditions of a pretrial diversion program offered by the prosecuting attorney;
- (3) the terms of the agreement are recorded in an instrument signed by the person and the prosecuting attorney and filed in the court in which the charge is pending; and
- (4) the prosecuting attorney electronically transmits information required by the prosecuting attorneys council concerning the withheld prosecution to the prosecuting attorneys council, in a manner and format designated by the prosecuting attorneys council.

(d) An agreement under subsection (c) may include conditions that the person:

- (1) pay to the clerk of the court an initial user's fee and monthly user's fees in the amounts specified in IC 33-37-4-1;
- (2) work faithfully at a suitable employment or faithfully pursue a course of study or vocational training that will equip the person for suitable employment;
- (3) undergo available medical treatment or counseling and remain in a specified facility required for that purpose;
- (4) support the person's dependents and meet other family responsibilities;
- (5) make restitution or reparation to the victim of the crime, **including the state**, for the:

(A) damage or injury that was sustained; **and**

(B) **costs incurred by the state in prosecuting the person;**

- (6) refrain from harassing, intimidating, threatening, or having any direct or indirect contact with the victim or a witness;
- (7) report to the prosecuting attorney at reasonable times;
- (8) answer all reasonable inquiries by the prosecuting attorney and promptly notify the prosecuting attorney of any change in address or employment; and
- (9) participate in dispute resolution either under IC 34-57-3 or a program established by the prosecuting attorney.

(e) An agreement under subsection (c)(2) may include other provisions reasonably related to the defendant's rehabilitation, if approved by the court.

(f) The prosecuting attorney shall notify the victim when

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1 prosecution is withheld under this section.

2 (g) All money collected by the clerk as user's fees under this section
3 shall be deposited in the appropriate user fee fund under IC 33-37-8.

4 (h) If a court withholds prosecution under this section and the terms
5 of the agreement contain conditions described in subsection (d)(6):

6 (1) the clerk of the court shall comply with IC 5-2-9; and

7 (2) the prosecuting attorney shall file a confidential form
8 prescribed or approved by the division of state court
9 administration with the clerk.

10 SECTION 2. IC 35-38-2-2.3, AS AMENDED BY P.L.60-2006,
11 SECTION 9, AND AS AMENDED BY P.L.140-2006, SECTION 24,
12 AND P.L.173-2006, SECTION 24, IS CORRECTED AND
13 AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]:
14 Sec. 2.3. (a) As a condition of probation, the court may require a person
15 to do a combination of the following:

16 (1) Work faithfully at suitable employment or faithfully pursue a
17 course of study or vocational training that will equip the person
18 for suitable employment.

19 (2) Undergo available medical or psychiatric treatment and
20 remain in a specified institution if required for that purpose.

21 (3) Attend or reside in a facility established for the instruction,
22 recreation, or residence of persons on probation.

23 (4) Support the person's dependents and meet other family
24 responsibilities.

25 (5) Make restitution or reparation to the victim of the crime,
26 **including the state, for the:**

27 **(A) damage or injury that was sustained; ~~by the victim; and~~**

28 **(B) costs incurred by the state in prosecuting the person.**

29 When restitution or reparation is a condition of probation, the
30 court shall fix the amount, which may not exceed an amount the
31 person can or will be able to pay, and shall fix the manner of
32 performance.

33 (6) Execute a repayment agreement with the appropriate
34 governmental entity to repay the full amount of public relief or
35 assistance wrongfully received, and make repayments according
36 to a repayment schedule set out in the agreement.

37 (7) Pay a fine authorized by IC 35-50.

38 (8) Refrain from possessing a firearm or other deadly weapon
39 unless granted written permission by the court or the person's
40 probation officer.

41 (9) Report to a probation officer at reasonable times as directed
42 by the court or the probation officer.

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(10) Permit the person's probation officer to visit the person at reasonable times at the person's home or elsewhere.

(11) Remain within the jurisdiction of the court, unless granted permission to leave by the court or by the person's probation officer.

(12) Answer all reasonable inquiries by the court or the person's probation officer and promptly notify the court or probation officer of any change in address or employment.

(13) Perform uncompensated work that benefits the community.

(14) Satisfy other conditions reasonably related to the person's rehabilitation.

(15) Undergo home detention under IC 35-38-2.5.

(16) Undergo a laboratory test or series of tests approved by the state department of health to detect and confirm the presence of the human immunodeficiency virus (HIV) antigen or antibodies to the human immunodeficiency virus (HIV), if:

(A) the person had been convicted of a sex crime listed in IC 35-38-1-7.1(e) and the crime created an epidemiologically demonstrated risk of transmission of the human immunodeficiency virus (HIV) as described in IC 35-38-1-7.1(b)(8); or

(B) the person had been convicted of an offense related to a controlled substance listed in IC 35-38-1-7.1(f) and the offense involved the conditions described in IC 35-38-1-7.1(b)(9)(A).

(17) Refrain from any direct or indirect contact with an individual.

(18) Execute a repayment agreement with the appropriate governmental entity or with a person for reasonable costs incurred because of the taking, detention, or return of a missing child (as defined in IC 10-13-5-4).

(19) Periodically undergo a laboratory chemical test (as defined in IC 14-15-8-1) or series of chemical tests as specified by the court to detect and confirm the presence of a controlled substance (as defined in IC 35-48-1-9). The person on probation is responsible for any charges resulting from a test and shall have the results of any test under this subdivision reported to the person's probation officer by the laboratory.

(20) If the person was confined in a penal facility, execute a reimbursement plan as directed by the court and make repayments under the plan to the authority that operates the penal facility for all or part of the costs of the person's confinement in the penal facility. The court shall fix an amount that:

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- 1 (A) may not exceed an amount the person can or will be able
 2 to pay;
 3 (B) does not harm the person's ability to reasonably be
 4 self-supporting or to reasonably support any dependent of the
 5 person; and
 6 (C) takes into consideration and gives priority to any other
 7 restitution, reparation, repayment, or fine the person is
 8 required to pay under this section.
- 9 (21) Refrain from owning, harboring, or training an animal.
 10 (22) *Participate in a reentry court program.*
- 11 (b) When a person is placed on probation, the person shall be given
 12 a written statement specifying:
 13 (1) the conditions of probation; and
 14 (2) that if the person violates a condition of probation during the
 15 probationary period, a petition to revoke probation may be filed
 16 before the earlier of the following:
 17 (A) One (1) year after the termination of probation.
 18 (B) Forty-five (45) days after the state receives notice of the
 19 violation.
- 20 (c) As a condition of probation, the court may require that the
 21 person serve a term of imprisonment in an appropriate facility at the
 22 time or intervals (consecutive or intermittent) within the period of
 23 probation the court determines.
- 24 (d) Intermittent service may be required only for a term of not more
 25 than sixty (60) days and must be served in the county or local penal
 26 facility. The intermittent term is computed on the basis of the actual
 27 days spent in confinement and shall be completed within one (1) year.
 28 A person does not earn credit time while serving an intermittent term
 29 of imprisonment under this subsection. When the court orders
 30 intermittent service, the court shall state:
 31 (1) the term of imprisonment;
 32 (2) the days or parts of days during which a person is to be
 33 confined; and
 34 (3) the conditions.
- 35 (e) Supervision of a person may be transferred from the court that
 36 placed the person on probation to a court of another jurisdiction, with
 37 the concurrence of both courts. Retransfers of supervision may occur
 38 in the same manner. This subsection does not apply to transfers made
 39 under IC 11-13-4 or IC 11-13-5.
- 40 (f) When a court imposes a condition of probation described in
 41 subsection (a)(17):
 42 (1) the clerk of the court shall comply with IC 5-2-9; and

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(2) the prosecuting attorney shall file a confidential form prescribed or approved by the division of state court administration with the clerk.

(g) *As a condition of probation, a court shall require a person:*

(1) *convicted of an offense described in IC 10-13-6-10;*

(2) *who has not previously provided a DNA sample in accordance with IC 10-13-6; and*

(3) *whose sentence does not involve a commitment to the department of correction;*

to provide a DNA sample as a condition of probation.

SECTION 3. IC 35-50-5-3, AS AMENDED BY P.L.173-2006, SECTION 54, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 3. (a) Except as provided in subsection (i) or (j), in addition to any sentence imposed under this article for a felony or misdemeanor, the court may, as a condition of probation or without placing the person on probation, order the person to make restitution to the victim of the crime **(including the state)**, the victim's estate, or the family of a victim who is deceased. The court shall base its restitution order upon a consideration of:

(1) property damages of the victim incurred as a result of the crime, based on the actual cost of repair (or replacement if repair is inappropriate);

(2) medical and hospital costs incurred by the victim (before the date of sentencing) as a result of the crime;

(3) the cost of medical laboratory tests to determine if the crime has caused the victim to contract a disease or other medical condition;

(4) earnings lost by the victim (before the date of sentencing) as a result of the crime, including earnings lost while the victim was hospitalized or participating in the investigation or trial of the crime; ~~and~~

(5) funeral, burial, or cremation costs incurred by the family or estate of a homicide victim as a result of the crime; **and**

(6) the costs incurred by the state in prosecuting the person.

(b) A restitution order under subsection (a), or (i), or (j) is a judgment lien that:

(1) attaches to the property of the person subject to the order;

(2) may be perfected;

(3) may be enforced to satisfy any payment that is delinquent under the restitution order by the person in whose favor the order is issued or the person's assignee; and

(4) expires;

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in the same manner as a judgment lien created in a civil proceeding.

(c) When a restitution order is issued under subsection (a), the issuing court may order the person to pay the restitution, or part of the restitution, directly to:

(1) the victim services division of the Indiana criminal justice institute in an amount not exceeding:

(A) the amount of the award, if any, paid to the victim under IC 5-2-6.1; and

(B) the cost of the reimbursements, if any, for emergency services provided to the victim under IC 16-10-1.5 (before its repeal) or IC 16-21-8; or

(2) a probation department that shall forward restitution or part of restitution to:

(A) a victim of a crime;

(B) a victim's estate; or

(C) the family of a victim who is deceased.

The victim services division of the Indiana criminal justice institute shall deposit the restitution it receives under this subsection in the violent crime victims compensation fund established by IC 5-2-6.1-40.

(d) When a restitution order is issued under subsection (a), (i), or (j), the issuing court shall send a certified copy of the order to the clerk of the circuit court in the county where the felony or misdemeanor charge was filed. The restitution order must include the following information:

(1) The name and address of the person that is to receive the restitution.

(2) The amount of restitution the person is to receive.

Upon receiving the order, the clerk shall enter and index the order in the circuit court judgment docket in the manner prescribed by IC 33-32-3-2. The clerk shall also notify the department of insurance of an order of restitution under subsection (i).

(e) An order of restitution under subsection (a), (i), or (j), does not bar a civil action for:

(1) damages that the court did not require the person to pay to the victim under the restitution order but arise from an injury or property damage that is the basis of restitution ordered by the court; and

(2) other damages suffered by the victim.

(f) Regardless of whether restitution is required under subsection (a) as a condition of probation or other sentence, the restitution order is not discharged by the completion of any probationary period or other sentence imposed for a felony or misdemeanor.

(g) A restitution order under subsection (a), (i), or (j), is not

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1 discharged by the liquidation of a person's estate by a receiver under
 2 IC 32-30-5 (or IC 34-48-1, IC 34-48-4, IC 34-48-5, IC 34-48-6,
 3 IC 34-1-12, or IC 34-2-7 before their repeal).

4 (h) The attorney general may pursue restitution ordered by the court
 5 under subsections (a) and (c) on behalf of the victim services division
 6 of the Indiana criminal justice institute established under IC 5-2-6-8.

7 (i) The court may order the person convicted of an offense under
 8 IC 35-43-9 to make restitution to the victim of the crime. The court
 9 shall base its restitution order upon a consideration of the amount of
 10 money that the convicted person converted, misappropriated, or
 11 received, or for which the convicted person conspired. The restitution
 12 order issued for a violation of IC 35-43-9 must comply with
 13 subsections (b), (d), (e), and (g), and is not discharged by the
 14 completion of any probationary period or other sentence imposed for
 15 a violation of IC 35-43-9.

16 (j) The court may order the person convicted of an offense under
 17 IC 35-43-5-3.5 to make restitution to the victim of the crime, the
 18 victim's estate, or the family of a victim who is deceased. The court
 19 shall base its restitution order upon a consideration of the amount of
 20 fraud or harm caused by the convicted person and any reasonable
 21 expenses (including lost wages) incurred by the victim in correcting the
 22 victim's credit report and addressing any other issues caused by the
 23 commission of the offense under IC 35-43-5-3.5. If, after a person is
 24 sentenced for an offense under IC 35-43-5-3.5, a victim, a victim's
 25 estate, or the family of a victim discovers or incurs additional expenses
 26 that result from the convicted person's commission of the offense under
 27 IC 35-43-5-3.5, the court may issue one (1) or more restitution orders
 28 to require the convicted person to make restitution, even if the court
 29 issued a restitution order at the time of sentencing. For purposes of
 30 entering a restitution order after sentencing, a court has continuing
 31 jurisdiction over a person convicted of an offense under IC 35-43-5-3.5
 32 for five (5) years after the date of sentencing. Each restitution order
 33 issued for a violation of IC 35-43-5-3.5 must comply with subsections
 34 (b), (d), (e), and (g), and is not discharged by the completion of any
 35 probationary period or other sentence imposed for an offense under
 36 IC 35-43-5-3.5.

37 (k) The court shall order a person convicted of an offense under
 38 IC 35-42-3.5 to make restitution to the victim of the crime in an amount
 39 equal to the greater of the following:

40 (1) The gross income or value to the person of the victim's labor
 41 or services.

42 (2) The value of the victim's labor as guaranteed under the

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1 minimum wage and overtime provisions of:

2 (A) the federal Fair Labor Standards Act of 1938, as amended
3 (29 U.S.C. 201-209); or

4 (B) IC 22-2-2 (Minimum Wage);

5 whichever is greater.

6 SECTION 4. [EFFECTIVE JULY 1, 2007] (a) **IC 33-39-1-8, as**
7 **amended by this act, applies only to prosecutions for offenses**
8 **committed after June 30, 2007.**

9 (b) **IC 35-38-2-2.3 and IC 35-50-5-3, both as amended by this**
10 **act, apply only to placing a person on probation following the**
11 **person's conviction of an offense committed after June 30, 2007.**

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